

1 For example, turn to page 60 of Exhibit 19.

2 CHIEF JUDGE CHACKIN: Is that comparable to
3 Cordaro?

4 MR. SCHAUBLE: Your Honor, you will see the
5 various customers listed there. But what Mr. Kay testified
6 to, and I'm not making any representation with respect to
7 this one specific station today, this list of customers
8 would not only include customers that were there -- who are
9 on the system in November 1995, but included customers who
10 are not on the system as of November 1995, but had been the
11 system at some point between September 1993 and that.

12 CHIEF JUDGE CHACKIN: You're saying it wasn't a
13 list of the current customers?

14 MR. SCHAUBLE: It was a list of the current
15 customers plus deleted customers.

16 MR. KNOWLES-KELLETT: He initially said it was
17 current customers. And then at his second deposition he
18 said, "No, it's not just current customers. It's current
19 customers plus everybody who's been deleted in the last year
20 and a half.

21 CHIEF JUDGE CHACKIN: So, did he give you the ones
22 which had been deleted?

23 MR. KNOWLES-KELLETT: He did not give us the ones
24 that were deleted. He specifically said that data had been
25 lost.

1 CHIEF JUDGE CHACKIN: So, you're saying that you
2 can't tell from this who were the customers in November of
3 '95?

4 MR. KNOWLES-KELLETT: You can't. He initially
5 told us that they were all November '95 customers. But you
6 cannot tell from it which were not. He later recanted.

7 CHIEF JUDGE CHACKIN: Mr. Keller?

8 MR. KELLER: Your Honor, first of all, I'll have
9 to go back and review the deposition transcript to find out
10 specifically what was being referred to at that time.

11 But I would say that this goes to a separate
12 issue. We're really dancing around two different things
13 here. One is, is there a discrepancy between the November
14 '95 submission by Mr. Kay and the March 1995 data? That's
15 one question that I don't really think is an admissibility
16 question. I think that's a question that's to be resolved
17 at hearing.

18 What I'm really impressing in this objection is,
19 what set of March 1995 data should we use? And I suggest
20 that we should use the March 1995 data that was submitted by
21 Mr. Kay, which we've repeatedly represented should not
22 differ in any material respect from what is ostensibly in
23 the Cordaro data. And unless the Bureau can say otherwise,
24 I don't know why we should rely on data that has all these
25 other problems.

1 CHIEF JUDGE CHACKIN: Now, what exhibit is the
2 March 1995 data?

3 MR. KELLER: Well, the one exhibit is the Cordaro
4 exhibits, 281 through 285. But that's the --

5 CHIEF JUDGE CHACKIN: No. What's the other
6 exhibit?

7 MR. KELLER: It's not been introduced by the
8 Bureau except in bits and pieces, and even then, it's very
9 incomplete. But an example of it would be these various
10 screen shots that were --

11 CHIEF JUDGE CHACKIN: What exhibit is that?

12 MR. KNOWLES-KELLETT: For example, WTB 272 would
13 be the March screen shots as to a particular call sign.

14 MR. KELLER: 272?

15 CHIEF JUDGE CHACKIN: 272.

16 MR. KNOWLES-KELLETT: Okay. That's just an
17 example. We've been through maybe 50 of them this morning,
18 Your Honor.

19 CHIEF JUDGE CHACKIN: Well, let me get it.
20 272. Now, this is data for March
21 '95.

22 MR. KNOWLES-KELLETT: Mr. Keller's saying it is.

23 MR. KELLER: It would be when he submitted the
24 document responses.

25 CHIEF JUDGE CHACKIN: Now, what's wrong with this

1 data? Why can't this be used?

2 MR. KNOWLES-KELLETT: We fully intend to use it,
3 Your Honor.

4 CHIEF JUDGE CHACKIN: Well, when do you intend to
5 use this, and when do you intend to use the Cordaro data?

6 MR. SCHAUBLE: Your Honor, I think part of what we
7 have to do is compare all three pieces of data in order to
8 get a fully accurate -- you know, to get as much information
9 as we can concerning --

10 CHIEF JUDGE CHACKIN: Well, is this inconsistent
11 with the Cordaro data?

12 MR. KNOWLES-KELLETT: We haven't done an elaborate
13 analysis of this, compared to the Cordaro date. We've done
14 an elaborate analysis of the November data. And that is at
15 Exhibit -- the compendium that isn't going to come in.

16 MR. SCHAUBLE: And there were discrepancies.

17 CHIEF JUDGE CHACKIN: Well, let's talk about the
18 March '95 data.

19 MR. KELLER: We've got two sets of data --I don't
20 want to have two sets of data, unless you're telling me that
21 one doesn't contain the information and somehow
22 inconsistent.

23 Which one should I rely on if it all deals with
24 the same material?

25 MR. KNOWLES-KELLETT: I think if Your Honor would

1 turn to page 60 of the exhibit in question, 280, 60 of 254.

2 This is a good example.

3 CHIEF JUDGE CHACKIN: What exhibit now? 154?

4 MR. KNOWLES-KELLETT: No, it's 180 the exhibit
5 we're turning to.

6 CHIEF JUDGE CHACKIN: Oh, okay.

7 MR. KNOWLES-KELLETT: 281. I'm sorry.

8 CHIEF JUDGE CHACKIN: 281.

9 MR. KNOWLES-KELLETT: I apologize. 281. If you'd
10 look at page 60.

11 CHIEF JUDGE CHACKIN: Page 60, all right. All
12 right. I have page 60.

13 MR. KNOWLES-KELLETT: Okay. Craig Sobel we
14 anticipate will testify as to what these headings at the top
15 mean. He designed and named these columns. Okay?

16 CHIEF JUDGE CHACKIN: I mean, this is the material
17 the way it was, or is this something that Sobel did?

18 MR. KNOWLES-KELLETT: Craig Sobel developed a
19 database for Mr. Kay. Okay? Kay's business relied on this
20 database on a day to day base. Cordaro copied within
21 minutes all the files. Craig Sobel testified that he
22 compared it and he said this was accurate -- this was a copy
23 from the database as of March 18.

24 CHIEF JUDGE CHACKIN: It's got a May 1998 date on
25 it.

1 MR. KNOWLES-KELLETT: May 1998. Where is that?

2 CHIEF JUDGE CHACKIN: On the heading of each page,
3 it says May 14, 1998.

4 MR. KNOWLES-KELLETT: Well, that has to do with
5 our printing it out. That's the day we printed out the
6 disc.

7 CHIEF JUDGE CHACKIN: I see.

8 MR. KNOWLES-KELLETT: It's not anything to do
9 with --

10 CHIEF JUDGE CHACKIN: Now, tell me about 60.

11 MR. KNOWLES-KELLETT: Okay. On page 60, you can
12 see that by frequency, by repeater site, site and repeater
13 number, there are mobile counts. And if you go back you can
14 pair up these columns. Customer 685 is a particular
15 customer. Name, address. And it breaks it out by mobile.

16 CHIEF JUDGE CHACKIN: Where do I see Customer 685
17 on this?

18 MR. KNOWLES-KELLETT: Middle of the page.

19 CHIEF JUDGE CHACKIN: This page?

20 MR. KNOWLES-KELLETT: Zooming down the left
21 column.

22 CHIEF JUDGE CHACKIN: 639 is the last one I see
23 here.

24 MR. KNOWLES-KELLETT: Oh, I'm sorry. Pick any
25 one.

1 CHIEF JUDGE CHACKIN: No, you pick.
2 MR. KNOWLES-KELLETT: Take 592.
3 CHIEF JUDGE CHACKIN: 592? All right.
4 MR. KNOWLES-KELLETT: Okay?
5 CHIEF JUDGE CHACKIN: What's the next number
6 represent, 20-02?
7 MR. KNOWLES-KELLETT: Twenty-seven. That has to
8 do with --
9 MR. SCHAUBLE: 20-02.
10 MR. KNOWLES-KELLETT: Oh, that's a repeater site
11 and a repeater number.
12 CHIEF JUDGE CHACKIN: Okay.
13 MR. KNOWLES-KELLETT: Okay.
14 CHIEF JUDGE CHACKIN: And this \$27. What is that?
15 MR. KNOWLES-KELLETT: Craig Sobel will testify as
16 to what these payment amounts were. I can't recall off the
17 top of --
18 CHIEF JUDGE CHACKIN: All right. And 85186?
19 MR. KNOWLES-KELLETT: That's a frequency number.
20 CHIEF JUDGE CHACKIN: All right.
21 MR. KNOWLES-KELLETT: And how many mobiles were --
22 that person was operated -- that customer is operating on
23 those mobiles.
24 CHIEF JUDGE CHACKIN: Yes.
25 MR. KNOWLES-KELLETT: And then there's another

1 repeater site and number. And I think the \$27 refers to the
2 monthly billing, but I'm not sure -- not at all certain of
3 that. And then there's another frequency, another number of
4 mobiles.

5 By using that date, we're able to compare it to
6 the '94 data. If you go back to 271, which is 272 is the
7 customer print screens.

8 CHIEF JUDGE CHACKIN: 272?

9 MR. KNOWLES-KELLETT: Right.

10 CHIEF JUDGE CHACKIN: I've got it.

11 MR. KNOWLES-KELLETT: Okay. If you read in there,
12 there's a number of mobiles. And there's a frequency. And
13 there's a bunch of hilltops with Fs. And we're really not
14 able to discern exactly how that pairs up with the Cordaro
15 data.

16 Now, I could tell you that I can't tell you that
17 Mr. Keller is wrong, that somebody who knows what this means
18 can figure out what number of mobiles is working on what
19 site and what repeater number. Okay? But I'm seeing
20 Sierra. I don't see a site, repeater number, whatever.

21 MR. SHAINIS: Your Honor, the issue though is not
22 how it pairs up with the Cordaro data.

23 MR. KNOWLES-KELLETT: If you're saying it's the
24 exact same thing, that is the issue.

25 MR. SHAINIS: No. But you're saying how it pairs

1 up with the Cordaro data. The Cordaro data is flawed at
2 best. I mean, we have a problem as to how Cordaro how
3 obtained the data, what was done with the data once it was
4 obtained from Mr. Cordaro because it was not in a format
5 that Mr. Kay keeps his data.

6 MR. KNOWLES-KELLETT: I think the testimony will
7 completely belie that, that it is the format that his data
8 is put in, in his computer.

9 MR. SHAINIS: My understanding is that this was
10 zipped, and he does not zip his data.

11 MR. KNOWLES-KELLETT: Your Honor, zipping a file
12 and unzipping it, it looks just like the file that was in
13 Kay's computer. And Craig Sobel will testify to that, Your
14 Honor.

15 CHIEF JUDGE CHACKIN: Well, what data is missing?

16 MR. KNOWLES-KELLETT: Can you see the F on
17 Santiago? Do you see the F on the far corner on Santiago?
18 My understanding is that has something to do with --

19 CHIEF JUDGE CHACKIN: Wait a minute. Which
20 exhibit are we looking at now?

21 MR. KELLER: I think we're on 272, Your Honor.

22 CHIEF JUDGE CHACKIN: 272, page 1?

23 MR. SHAINIS: Part of the problem is the Bureau
24 has had this data for how many years now? And they're
25 floundering with it.

1 MR. KNOWLES-KELLETT: Your Honor, we understand
2 the Cordaro data and then this customer print screen we
3 still have problems.

4 MR. SHAINIS: But they had an opportunity. They
5 asked questions about it. I mean, how many years have you
6 had the customer data?

7 MR. KNOWLES-KELLETT: Well, what we did was we
8 asked questions about the Cordaro data, and apparently
9 they're saying it's the same data, only they're saying
10 they're chain of custody problems. We asked those
11 questions, and we were told it was an accurate reflection of
12 the database as of March 3. And this we --

13 MR. SHAINIS: Well, you did not ask -- I don't
14 think you asked those questions.

15 CHIEF JUDGE CHACKIN: Well, is the material
16 missing in this data which is insufficient you feel you need
17 for loading information as evidence?

18 MR. SCHAUBLE: Your Honor, we think it's important
19 for the record to go through this record and do a comparison
20 of various data to see -- you know, to what extent there are
21 discrepancies.

22 CHIEF JUDGE CHACKIN: Well, are there
23 discrepancies? I assume you've compared the two.

24 MR. SCHAUBLE: Your Honor, using the Cordaro data
25 we were able to determine that there was.

1 CHIEF JUDGE CHACKIN: Are there discrepancies?

2 MR. KNOWLES-KELLETT: We haven't performed an
3 elaborate analysis, Your Honor.

4 MR. SHAINIS: How long have you had the data that
5 you could have done the analysis?

6 MR. KNOWLES-KELLETT: We understood that this was
7 an accurate reflection of Kay's database that day. So,
8 we -- I think if we were fully justified in relying on the
9 Cordaro data --

10 MR. SHAINIS: I mean, you're picking and
11 choosing --

12 CHIEF JUDGE CHACKIN: Well, if you're relying on
13 the Cordaro data, why are you putting in Kay's data? I
14 mean, if it's the same thing, the same period it covers, why
15 are you putting this data, if you're relying on the Cordaro
16 data?

17 MR. SHAINIS: The Cordaro data has problems.

18 MR. SCHAUBLE: Well, we disagree with that, Your
19 Honor.

20 CHIEF JUDGE CHACKIN: Well, let's assume even if
21 it didn't have any problems. Why are you putting in data
22 relating to the same period from two sources? I mean, there
23 must be a reason for it.

24 MR. SCHAUBLE: Because first of all --

25 CHIEF JUDGE CHACKIN: If you're not satisfied with

1 Kay's data, why are you putting it in? And if you're
2 satisfied with it, then why do we need the Cordaro data?
3 What am I supposed to make of these two exhibits?

4 Well, I think the easiest way to handle this thing
5 is I'm going to defer a ruling on -- what is it? Exhibit --

6 MR. SCHAUBLE: Two eighty-one.

7 CHIEF JUDGE CHACKIN: I'll defer a ruling on 281
8 until -- well, you're going to examine Kay, and you can
9 develop from Kay when you examine Kay any areas you feel
10 which are somehow unclear. And if you feel subsequent to
11 your examination of Kay that you need the Cordaro data on,
12 and you can put him on -- Mr. Sobel on, and then I'll make a
13 ruling whether we need that data or not.

14 So, I will -- at this point, I'll withhold the
15 ruling on Bureau Exhibit 281.

16 MR. KNOWLES-KELLETT: Okay. The following
17 exhibits are exactly the same.

18 CHIEF JUDGE CHACKIN: Well, I'll withhold the
19 ruling on 282, 283, 284 and 285 for the same reason.

20 MR. SCHAUBLE: Thank you, Your Honor.

21 CHIEF JUDGE CHACKIN: Now, we're on Exhibit 286.

22 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
23 286 into evidence.

24 CHIEF JUDGE CHACKIN: Any objection?

25 MR. KELLER: No objection.

1 CHIEF JUDGE CHACKIN: All right. Bureau Exhibit
2 286 is received.

3 (The document referred to,
4 having been previously marked
5 for identification as Bureau
6 Exhibit 286, was received in
7 evidence.)

8 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
9 287 into evidence.

10 MR. KELLER: No objection.

11 CHIEF JUDGE CHACKIN: Bureau Exhibit 287 is
12 received.

13 (The document referred to,
14 having been previously marked
15 for identification as Bureau
16 Exhibit 287, was received in
17 evidence.)

18 MR. SCHAUBLE: Your Honor, Bureau Exhibit 288
19 was --

20 CHIEF JUDGE CHACKIN: Not offered.

21 MR. SCHAUBLE: Not offered.

22 CHIEF JUDGE CHACKIN: All right. 289 is the next
23 exhibit.

24 MR. KELLER: Your Honor, I have no objection to
25 this, but I do have a question for the Bureau. There was a

1 time in March of this year maybe, February, I don't know,
2 when I provided you some supplemental Forest Service
3 permits. Does this exhibit include the supplemental
4 information, as well?

5 There was a range of dates you were missing, as I
6 recall. In other words, is this the complete set of Forest
7 Service --

8 MR. KNOWLES-KELLETT: What you provided to us in
9 March of this year, to the best of my knowledge, was not
10 Forest Service permits but Forest Service printouts that
11 were missing. Printouts of customers and amounts paid --

12 MR. KELLER: I have no objection. I just wanted
13 to get clear.

14 MR. KNOWLES-KELLETT: All right.

15 CHIEF JUDGE CHACKIN: Bureau Exhibit 289 is
16 received.

17 (The document referred to,
18 having been previously marked
19 for identification as Bureau
20 Exhibit 289, was received in
21 evidence.)

22 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
23 290 into evidence.

24 CHIEF JUDGE CHACKIN: Any objection?

25 MR. KELLER: No objection, Your Honor.

1 CHIEF JUDGE CHACKIN: Bureau Exhibit 290 is
2 received.

3 (The document referred to,
4 having been previously marked
5 for identification as Bureau
6 Exhibit 290, was received in
7 evidence.)

8 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
9 291 into evidence.

10 CHIEF JUDGE CHACKIN: Any objection?

11 MR. KELLER: Yes, Your Honor. Give me a second to
12 find it.

13 First, Your Honor, we want to clarify. Is this
14 being offered as a document that was prepared by Mr. Oei?
15 Somebody pronounce the man's name.

16 MR. SCHAUBLE: Oei.

17 MR. KELLER: Oei. Well, since he's being offered
18 as a sponsoring witness, I gather we can certainly cross-
19 examine him on this document. But my initial question is,
20 was he -- this is obviously a compilation of various
21 inspections.

22 MR. KNOWLES-KELLETT: It depends on how you phrase
23 it. You know, they went out for a period of a month and
24 inspected all of Kay's stations.

25 MR. SHAINIS: Who is they?

1 MR. KNOWLES-KELLETT: Kay went with Paul Oei and
2 Ben Yakimura, primarily. I don't know who exactly
3 accompanied Paul Oei, CIB staff or what.

4 MR. KELLER: I guess my first question, was Paul
5 Oei present and participating in all of these inspections?

6 MR. KNOWLES-KELLETT: Yes.

7 MR. KELLER: Okay.

8 CHIEF JUDGE CHACKIN: He's going to be produced
9 for cross-examination?

10 MR. SCHAUBLE: Yes, Your Honor.

11 CHIEF JUDGE CHACKIN: All right. Any objection
12 subject to cross-examination?

13 MR. SHAINIS: Are we going to be able to see the
14 underlying reports prior to the time that he testifies?

15 MR. SCHAUBLE: They've been produced already, Your
16 Honor.

17 MR. KELLER: So, there's nothing else that has not
18 already been produced then?

19 MR. KNOWLES-KELLETT: Not that we've seen.

20 MR. KELLER: Okay. So, these are the same
21 documents that were produced at his deposition or before?

22 MR. SCHAUBLE: Probably before his deposition.

23 MR. KELLER: I guess subject to cross-examination
24 of Mr. Oei or voir dire or whatever you want to call it, we
25 wouldn't have any objection then.

1 CHIEF JUDGE CHACKIN: All right. 291 is received.

2 (The document referred to,
3 having been previously marked
4 for identification as Bureau
5 Exhibit 291, was received in
6 evidence.)

7 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
8 292 into evidence.

9 CHIEF JUDGE CHACKIN: Any objection?

10 MR. KELLER: No objection.

11 CHIEF JUDGE CHACKIN: Bureau Exhibit 292 is
12 received.

13 (The document referred to,
14 having been previously marked
15 for identification as Bureau
16 Exhibit 292, was received in
17 evidence.)

18 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
19 293 into evidence.

20 CHIEF JUDGE CHACKIN: Any objection?

21 MR. KELLER: No objection.

22 CHIEF JUDGE CHACKIN: Bureau Exhibit 293 is
23 received.

24 (The document referred to,
25 having been previously marked

1 for identification as Bureau
2 Exhibit 293, was received in
3 evidence.)

4 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
5 294 into evidence.

6 CHIEF JUDGE CHACKIN: Any objection?

7 MR. KELLER: Yes, Your Honor. And just in the
8 interest of convenience, let me say that what I'm about to
9 say applies to Exhibits 294 through 305.

10 CHIEF JUDGE CHACKIN: This is 294, isn't it?

11 MR. KELLER: Yes. We're on 294. And the
12 objection that I'm going to make is really to the whole
13 group of exhibits 294 through 305.

14 CHIEF JUDGE CHACKIN: Through 305?

15 MR. KELLER: Yes. These relate to matters, Your
16 Honor, dating back between 1986 and 1988 roughly. Some of
17 the stuff goes back to as far as '86 and '87. The most
18 recent I believe, '88. There might be an '89 license in
19 here or something.

20 But my point is, this is material which was
21 anywhere between five to eight years old at the time of the
22 308(b), six to nine years year old at the time of the HDO.
23 Presumably, it's being offered to suggest some impropriety
24 by Mr. Kay in connection with these matters.

25 Assuming for the sake of argument that there was

1 any sort of impropriety by Mr. Kay, number one, this has not
2 been specifically raised in the HDO. And number two, the
3 alleged impropriety would be very stale even at the time --
4 as I say, even at the time the 308(b) was issued, much less
5 the HDO, which came a year after the 308(b) letter.

6 And I would refer Your Honor to a recent -- well,
7 it's a July 25 -- it was released July 24, 1995. A
8 Commission decision actually issued by the Chief of the
9 Wireless Bureau acting under delegated authority. The title
10 is American Mobile Phone, Inc. and RAM Technologies. The
11 citation 10 FCC Record 12,297. It's also -- the document
12 number is DA95-1632.

13 CHIEF JUDGE CHACKIN: What is the citation?

14 MR. KELLER: 10 FCC Record 12,297. It's a 1995
15 decision by the Wireless Bureau under delegated authority in
16 American Phone Mobile Phone, Inc.

17 CHIEF JUDGE CHACKIN: All right.

18 MR. KELLER: At any rate, this was a case -- there
19 was a previous decision involving Capitol Radio, Telephone
20 and RAM in which it was -- during the course of the hearing
21 in that proceeding, it was suggested that there had been
22 some improprieties on the part of RAM, but they had not been
23 designated in that case, so they were not addressing that
24 particular case. Later, the party involved there filed a
25 petition against RAM in an assignment application raising

1 these same issues.

2 And what the Commission stated there, I just want
3 to read this one little part from paragraph 11 of the
4 decision. "One of the factors in such an analysis, that is,
5 an analysis about whether this alleged wrongdoing bears on
6 the applicant's qualifications, is the passage of time since
7 the misconduct. The misconduct alleged by Capitol concerned
8 alleged rule violations by RAM from 1990 and 1991. Because
9 four to five years have passed since those alleged
10 violations occurred and the Private Radio Bureau determined
11 at that time that only a warning was warranted, we do not
12 believe these facts impact adversely on RAM's qualifications
13 to remain a Commission licensee."

14 So, I mean, in this case we have allegations of
15 potentially disqualifying misconduct which the Commission
16 decided not to pursue because it was so stale. It was four
17 to five years old.

18 Here we have -- I assume that where the Bureau is
19 going with this is they're going to suggest misconduct or
20 impropriety on the part of Mr. Kay, although we certainly
21 would deny that. And if this comes in, we'll present
22 contradictory evidence. But nevertheless, we're talking
23 about stuff that's six to nine years old. Really has a
24 different timeframe from the facts at issue in this case and
25 a different set of circumstances.

1 So, on that basis, I would object to it on the
2 grounds of relevance.

3 CHIEF JUDGE CHACKIN: All right. Go ahead.

4 MR. SCHAUBLE: Several points, Your Honor. First,
5 I think this does fall squarely within the scope of the
6 abuse of process issue that was designated in this
7 proceeding.

8 CHIEF JUDGE CHACKIN: By whom?

9 MR. SCHAUBLE: The Commission.

10 CHIEF JUDGE CHACKIN: You're talking about 308
11 again?

12 MR. SCHAUBLE: No, Your Honor. There is an issue
13 to determine whether Kay abused the Commission's processes
14 by using various names.

15 CHIEF JUDGE CHACKIN: Right.

16 MR. SCHAUBLE: That's the issue that these
17 exhibits relate to.

18 CHIEF JUDGE CHACKIN: And the designation order, I
19 assume, laid out the basis for that issue, did it not?

20 MR. SCHAUBLE: Briefly, Your Honor. It did not
21 get down to the level of discussing specific incidents.

22 MR. KELLER: Your Honor, I --

23 MR. SCHAUBLE: May I continue?

24 MR. KELLER: Sorry. Excuse me.

25 CHIEF JUDGE CHACKIN: Let Mr. Schauble continue.

1 MR. SCHAUBLE: And we believe evidence could be
2 adduced which could lead to a finding that various
3 applications filed in the name of Carla Pfeifer who we've
4 noticed as a witness here in this proceeding, were in
5 fact -- Mr. Kay was the real part in interest or in fact,
6 Ms. Pfeifer was a little more than the name, and Mr. Kay was
7 the driving force behind these applications.

8 Now, with respect to the argument concerning
9 timeframe, first of all, Your Honor, this proceeding was
10 designated back at the end of '94. And it's regrettable
11 that it's taken this long to get to this point where we're
12 actually trying this case. But I think the relevant
13 comparison purposes would be back at the time the proceeding
14 was designated for hearing.

15 And one case that comes to mind dealing with
16 specific statute of limitations I think -- as I recall,
17 there was an argument made in the Tri-State Broadcasting
18 case. I don't know have an exact citation here in front of
19 me. The conduct in that case was so remote that it served
20 the basis for disqualification.

21 CHIEF JUDGE CHACKIN: Wait a minute. You're
22 telling me that -- counsel stated that we're dealing with
23 data that goes back to '86 to '88.

24 MR. KNOWLES-KELLETT: We are dealing with license
25 applications that were filed in '86, '88. Improprieties

1 that were discovered in the early '90s. Investigated in
2 '94, and the designation came out at the end of '94.

3 CHIEF JUDGE CHACKIN: And is there some reference
4 in the designation order to these matters going back to '86
5 to '88?

6 MR. KNOWLES-KELLETT: Basically, it says he abused
7 the Commission's processes by filing applications in various
8 names. And what happened in this instance, we believe that
9 Ms. Pfeifer will testify that Kay came to her. She worked
10 in his shop like on weekends. He said, "Sign these radio
11 applications." She did. He said, "Could you give me a
12 check for \$1,800" or some amount." I'll give you a check
13 right back, and she did.

14 I think that that's basically what she said at her
15 deposition, Your Honor.

16 CHIEF JUDGE CHACKIN: So, she testified at
17 deposition?

18 MR. KNOWLES-KELLETT: Yes, Your Honor.

19 CHIEF JUDGE CHACKIN: She's been deposed?

20 MR. SCHAUBLE: Correct, Your Honor.

21 MR. SHAINIS: Your Honor, she was never provided
22 her deposition, however. To the best of my knowledge, none
23 of the Bureau's witnesses have been provided their
24 deposition.

25 MR. SCHAUBLE: Your Honor --

1 MR. SHAINIS: To the best of my knowledge.

2 MR. SCHAUBLE: Mr. Kay deposed Ms. Pfeifer. She
3 was deposed by Kay not by --

4 MR. SHAINIS: I thought you deposed her.

5 MR. SCHAUBLE: No.

6 MR. SHAINIS: Okay.

7 MR. KELLER: Your Honor?

8 CHIEF JUDGE CHACKIN: Yes.

9 MR. KELLER: What I wanted to say was that I do
10 not believe the HDO included this matter. While the HDO
11 talked in general terms --

12 CHIEF JUDGE CHACKIN: What paragraph is that?

13 MR. KELLER: Well, I'm not sure what paragraph
14 they were referring to.

15 CHIEF JUDGE CHACKIN: Well, paragraph five is the
16 only one that deals with that.

17 MR. KELLER: Okay, well, I think if you also look
18 at paragraph three, though, where they specifically
19 discussed --

20 CHIEF JUDGE CHACKIN: I see.

21 MR. KELLER: -- specific names of companies that
22 Kay is alleged to have filed applications in. You know,
23 Carla Pfeifer's name is not among this. So, certainly Kay
24 was not given any reason to know from this HDO that we were
25 going to be going back to 1986, 1987 applications.

1 As far as Mr. Schauble's comments regarding the
2 timing, I would say that on general principle, what he
3 states, I agree with and that the appropriate timing is at
4 the time of HDO. My point is under the American Mobilephone
5 case, this was already still at the time of HDO. I was
6 actually trying to do the Bureau a favor by even pushing it
7 back to the time of the 308(b) request. I would submit that
8 even a year earlier, a year prior to the HDO, in January of
9 '94, when the HD 308(b) was requested, was submitted, that
10 even at that time, this information was very stale.

11 CHIEF JUDGE CHACKIN: All right. Anything
12 further, counsel?

13 MR. KELLER: That's it.

14 CHIEF JUDGE CHACKIN: I will receive the material.
15 The argument whether it's stale or not is an argument to be
16 made after we have the testimony of Ms. Pfeifer. As you
17 pointed out, I believe you said the Commission had already
18 taken some kind of action with respect to the matter. They
19 felt that that was sufficient.

20 In this case, there has never been any litigation
21 in this matter. Now, to the extent to which it's stale is
22 an argument that could be made, assuming the Bureau is
23 successful in establishing some -- so that's a question to
24 come later. First, we'll define the facts.

25 I see nothing in the designation order which

1 precludes going back to '86 to '88. But, the Commission has
2 set forth a time limit and apparently this witness has
3 already been deposed. So, presumably, you're familiar with
4 what she's going to say. I will receive -- what exhibits
5 are we talking about now?

6 MR. KELLER: 294 through 305. If Your Honor would
7 just give me a second and let me just skim these to make
8 sure there's no other independent --

9 CHIEF JUDGE CHACKIN: All right.

10 MR. KELLER: I don't believe there are any other
11 objections.

12 CHIEF JUDGE CHACKIN: All right, that's 294
13 through, what is it?

14 MR. KELLER: 305.

15 CHIEF JUDGE CHACKIN: All right, Bureau Exhibits
16 294 through 305 will be received.

17 (The documents referred to,
18 having been previously marked
19 for identification as Bureau
20 Exhibits 294 through 305, were
21 received in evidence.)

22 MR. SCHAUBLE: Your Honor, at this time we move
23 Bureau Exhibit 306 into evidence.

24 CHIEF JUDGE CHACKIN: Any objection?

25 MR. KELLER: No objection, Your Honor.

1 CHIEF JUDGE CHACKIN: Bureau Exhibit 306 is
2 received.

3 (The document referred to,
4 having been previously marked
5 for identification as Bureau
6 Exhibit 306, was received in
7 evidence.)

8 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
9 307 into evidence.

10 CHIEF JUDGE CHACKIN: Any objection?

11 MR. KELLER: No objection.

12 CHIEF JUDGE CHACKIN: 307 is received.

13 (The document referred to,
14 having been previously marked
15 for identification as Bureau
16 Exhibit 307, was received in
17 evidence.)

18 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
19 308 into evidence.

20 CHIEF JUDGE CHACKIN: Any objection?

21 MR. KELLER: No objection.

22 CHIEF JUDGE CHACKIN: Bureau Exhibit 308 is
23 received.

24 (The document referred to,
25 having been previously marked

1 for identification as Bureau
2 Exhibit 308, was received in
3 evidence.)

4 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
5 309 into evidence.

6 CHIEF JUDGE CHACKIN: Any objection?

7 MR. KELLER: No objection.

8 CHIEF JUDGE CHACKIN: Bureau Exhibit 309 is
9 received.

10 (The document referred to,
11 having been previously marked
12 for identification as Bureau
13 Exhibit 309, was received in
14 evidence.)

15 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
16 310 into evidence.

17 CHIEF JUDGE CHACKIN: Any objection?

18 MR. KELLER: Give me one moment, please, Your
19 Honor?

20 CHIEF JUDGE CHACKIN: All right.

21 (Pause.)

22 MR. KELLER: My question regarding this exhibit is
23 more of a question and not an objection, depending on the
24 answers. I do know that these were at one time -- are these
25 still publicly available documents?

1 MR. KNOWLES-KELLETT: No.

2 MR. KELLER: Then, I guess the question is, how do
3 we verify these? They're being offered as official notice.
4 I know at one time, and we're going back many, many years,
5 at one time, one could obtain this information by calling
6 the 33rd --

7 MR. KNOWLES-KELLETT: This is being offered to
8 show that Hessman's mobiles were loaded on Kay's system, and
9 I don't think it's a matter in much dispute.

10 MR. KELLER: I guess what I would seek, I guess,
11 is we may want to, not in relation to this specific exhibit,
12 but in general, we may also enter, I believe we put in some
13 of our exhibits, various loading cards. And, I just want to
14 know if we can get the air clear now as to how we're going
15 to treat these, if they're not any longer available for the
16 public inspection?

17 Certainly, we do not have it within our ability to
18 verify it, but I presume you all do in some way?

19 MR. KNOWLES-KELLETT: I'd have to check on that.
20 You're putting them in for the truth of the numbers, the
21 truth of who's loaded on Kay's system?

22 MR. KELLER: We would be putting them in for what
23 units are loaded on certain channels. In other words --

24 MR. KNOWLES-KELLETT: If we're going to have to
25 reach that issue --

1 MR. KELLER: Well, we'll address that issue at the
2 time. I guess for the purpose that you just stated, we have
3 no objection with this exhibit for that purpose.

4 MR. KNOWLES-KELLETT: For this purpose, Your
5 Honor, let me clarify, the previous two licenses indicate
6 the number of mobiles Hessman Security was licensed for. At
7 this time, Hessman Security was an end user on Kay's systems
8 and these are coming in to show that Hessman was an end user
9 on Kay's system, and that subject to that qualification,
10 he's not objecting.

11 CHIEF JUDGE CHACKIN: All right, Bureau Exhibit
12 310 is received.

13 (The document referred to,
14 having been previously marked
15 for identification as Bureau
16 Exhibit 310, was received in
17 evidence.)

18 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
19 311 into evidence.

20 MR. KELLER: No objection.

21 CHIEF JUDGE CHACKIN: Bureau Exhibit 311 is
22 received.

23 (The document referred to,
24 having been previously marked
25 for identification as Bureau

1 Exhibit 311, was received in
2 evidence.)

3 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
4 312 into evidence.

5 CHIEF JUDGE CHACKIN: Any objection?

6 MR. KELLER: I guess I would question in
7 particular the fax cover sheet, what part of the exhibit --
8 in other words, page one of the exhibit, what's it being
9 offered for?

10 MR. SCHAUBLE: Your Honor, page one, it says here,
11 is an application filed in the name of -- signed by Vince
12 Cordaro, filed in the name of Good Trucking Group, Inc.
13 And, there's a fax cover sheet here which is being sent to
14 James Kay, Jr.

15 The first page merely indicates that the material
16 in question was sent to Mr. Kay.

17 CHIEF JUDGE CHACKIN: All right, any objection?

18 MR. KELLER: I guess not.

19 CHIEF JUDGE CHACKIN: All right, Bureau Exhibit
20 312 is received.

21 (The document referred to,
22 having been previously marked
23 for identification as Bureau
24 Exhibit 312, was received in
25 evidence.)

1 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
2 313 into evidence.

3 CHIEF JUDGE CHACKIN: Any objection?

4 MR. KELLER: No objection, Your Honor.

5 CHIEF JUDGE CHACKIN: Okay, then it's received.

6 (The document referred to,
7 having been previously marked
8 for identification as Bureau
9 Exhibit 313, was received in
10 evidence.)

11 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
12 314 into evidence.

13 MR. KELLER: One moment, please?

14 CHIEF JUDGE CHACKIN: All right.

15 MR. SHAINIS: Your Honor, could I ask the Bureau
16 what 314 is being offered for?

17 CHIEF JUDGE CHACKIN: What is it being offered
18 for?

19 MR. SCHAUBLE: Your Honor, this involves a loading
20 dispute with another licensee and one thing is that there's
21 a representation being made here that this firm represents
22 Mr. Cordaro and this is the same law firm that was Mr.
23 Kay's.

24 CHIEF JUDGE CHACKIN: Is that the sole purpose of
25 this?

1 MR. KNOWLES-KELLETT: Vince Cordaro will testify,
2 we believe -- this goes to whether Cordaro was actually the
3 real party in interest in the particular license at issue,
4 or Mr. Kay, because we think that Mr. Cordaro has no real
5 knowledge of these facts that are being submitted on his
6 behalf, between Mr. Brown and Mr. Kay.

7 MR. SHAINIS: Your Honor, the letter is undated.

8 CHIEF JUDGE CHACKIN: It has a date on it, oh,
9 September 9, 1992.

10 MR. SHAINIS: The letter is unsigned.

11 CHIEF JUDGE CHACKIN: The letter apparently is
12 addressed.

13 MR. SHAINIS: The affidavit is unsigned.

14 CHIEF JUDGE CHACKIN: It's a draft, apparently.
15 It's not a letter which was sent.

16 MR. SCHAUBLE: Your Honor --

17 MR. KNOWLES-KELLETT: It was Mr. Cordaro's records
18 with this call sign, Your Honor, Mr. Cordaro's involvement
19 in the licenses at issue will be at issue here. Rather his
20 lack of involvement is at issue.

21 MR. SHAINIS: How does it show that? I mean, you
22 don't know -- this is not --

23 MR. KNOWLES-KELLETT: I don't think it's being
24 offered for the truth of the matter.

25 CHIEF JUDGE CHACKIN: It's apparently only a draft

1 prepared by Mr. Brown and never sent. Is that right?

2 MR. SCHAUBLE: No, Your Honor, we believe the
3 letter -- not this version of the letter, but this is what
4 is available.

5 MR. KELLER: Is it your position that Cordaro
6 never signed this affidavit?

7 MR. SCHAUBLE: Yes, I think it is.

8 MR. KELLER: Because if he did sign the affidavit,
9 then it contradicts what you just said you're offering it
10 for, that it would be sort of disingenuous to offer this
11 when he, in fact, signed an affidavit attesting to the very
12 fact you're saying this letter indicates the opposite of.

13 MR. KNOWLES-KELLETT: On one level, you're right,
14 but on another level, you're on a level with just signing
15 the affidavit with barely reading the letter.

16 MR. KELLER: Then we should be --

17 CHIEF JUDGE CHACKIN: Wait a minute. If there is
18 a document here showing an affidavit signed by Mr. Cordaro,
19 why isn't that in evidence?

20 MR. SCHAUBLE: Your Honor, I don't --

21 MR. KNOWLES-KELLETT: I don't believe we had the
22 document, however, I think they have the document submitted
23 as one of their exhibits.

24 MR. SCHAUBLE: One of their proposed exhibits.

25 CHIEF JUDGE CHACKIN: Well, you want to use it as

1 your exhibit? I don't understand what the purpose of this
2 is?

3 MR. SCHAUBLE: That's what we had available to us.

4 CHIEF JUDGE CHACKIN: Well --

5 MR. SCHAUBLE: I think we'd be --

6 CHIEF JUDGE CHACKIN: Obviously, I'm going to
7 reject this exhibit. You say that they have an exhibit
8 which is actually an affidavit signed by Mr. Cordaro?

9 MR. SCHAUBLE: I believe that's correct, Your
10 Honor.

11 MR. KELLER: I believe we have it, and if they
12 remember it, then we probably did. I couldn't remember if
13 we actually put it in our exhibits or not, but, yes.

14 CHIEF JUDGE CHACKIN: So, why in the world are we
15 using a draft, unsigned, an affidavit which is unsigned, to
16 show what?

17 MR. KNOWLES-KELLETT: Because Mr. Cordaro produced
18 this to us, and only this.

19 CHIEF JUDGE CHACKIN: That's fine. Now, the
20 question is, is it the best evidence or is it even relevant
21 a draft which is, when, in fact, there is apparently a
22 letter containing an affidavit signed by Mr. Cordaro?

23 MR. SCHAUBLE: Your Honor, that's, you know --

24 CHIEF JUDGE CHACKIN: In any event, I will reject
25 Bureau Exhibit 314. Apparently, there is available the

1 document itself, which was signed by Mr. Cordaro.

2 (The document referred to,
3 having been previously marked
4 for identification as Bureau
5 Exhibit 314, was rejected as
6 evidence.)

7 MR. SCHAUBLE: Your Honor, we move Bureau Exhibit
8 315 into evidence.

9 CHIEF JUDGE CHACKIN: Any objection?

10 MR. SHAINIS: Your Honor, let me look at 315.

11 CHIEF JUDGE CHACKIN: All right.

12 MR. SHAINIS: This is a letter to Terry Fishel,
13 and what is that being offered for?

14 MR. SCHAUBLE: This is a letter that, you know,
15 purports to be submitted on behalf of Mr. Cordaro to the
16 Commission and we believe the record will show that this
17 letter was, in fact, prepared by Mr. Kay and shows the
18 involvement of Mr. Kay with respect to this, in this
19 application.

20 MR. KNOWLES-KELLETT: And, it goes to the
21 Intermountain microwave factors.

22 CHIEF JUDGE CHACKIN: I think there are serious
23 questions about what the Intermountain microwave factors
24 controlled, in light of the Commission's granting LMA's and
25 the Commission granting all kinds of sales agreements, joint

1 sales agreements, joint operating agreements. So, I don't
2 know where Intermountain stands anymore in terms of control.
3 Certainly as far as the Mass Media Bureau, there's a very
4 serious question about whether Intermountain is still a
5 basis for control, in light of the LMA's, the Commission
6 allows, where obviously control was turned over, except for
7 the ultimate decision-making authority invested in the
8 licensee.

9 And, I just think we're flooded with joint sales
10 agreements and joint operating agreements, whereby all kinds
11 of activities are performed by one of the licensees on
12 behalf of the other licensees, including sales staff, joint
13 general manager, keeping the bookkeeping for the other
14 party, all these other things.

15 So, you're going to have to show me, in light of
16 all that, how Intermountain still is a basis for determining
17 control?

18 MR. SCHAUBLE: Your Honor, as recently as the
19 Commission series designation order a couple of months ago
20 in Norcom Communications Corporation, the Commission
21 continued to apply the Intermountain factors and the
22 wireless contacts.

23 CHIEF JUDGE CHACKIN: I'll have to look at that,
24 in light of what the Commission has allowed in Mass Media.
25 I mean, there's a serious question in my mind as to what one

1 licensee can do on behalf of another licensee, without being
2 in control of the other's operation.

3 MR. KNOWLES-KELLETT: I think, too, Your Honor,
4 we're talking about events that took place in the early
5 '90s, when Intermountain was the operating --

6 CHIEF JUDGE CHACKIN: Well, I think the LMA's go
7 back to the early '90s and so do joint operating agreements
8 go back to the early '90s. So, we'll just have to deal with
9 that when the time comes, but those are legal matters which
10 I think we're going to have to deal with, what constitutes
11 control.

12 But, in any event, any objection to --

13 MR. SHAINIS: On a relevancy ground, Your Honor.

14 CHIEF JUDGE CHACKIN: On a relevancy ground. This
15 is to show that -- what you're going to show here, this
16 letter, although it was signed by Mr. Cordaro, was prepared
17 by Mr. Kay, is that what --

18 MR. SCHAUBLE: Correct, Your Honor.

19 CHIEF JUDGE CHACKIN: You're going to show this
20 through Mr. Cordaro, is that your purpose?

21 MR. KNOWLES-KELLETT: Possibly both, Your Honor.

22 CHIEF JUDGE CHACKIN: All right, I will receive
23 315 for that purpose.

24 Next exhibit?

25 //

1 (The document referred to,
2 having been previously marked
3 for identification as Bureau
4 Exhibit 315, was received in
5 evidence.)

6 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
7 316 into evidence.

8 CHIEF JUDGE CHACKIN: Any objection?

9 MR. SHAINIS: Just a moment, Your Honor. No
10 objection.

11 CHIEF JUDGE CHACKIN: 316 is received.

12 (The document referred to,
13 having been previously marked
14 for identification as Bureau
15 Exhibit 316, was received in
16 evidence.)

17 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
18 317 into evidence.

19 CHIEF JUDGE CHACKIN: Any objection?

20 MR. SHAINIS: No objection.

21 CHIEF JUDGE CHACKIN: 317 is received.

22 (The document referred to,
23 having been previously marked
24 for identification as Bureau
25 Exhibit 317, was received in

1 evidence.)

2 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
3 318 into evidence.

4 CHIEF JUDGE CHACKIN: Any objection?

5 MR. SHAINIS: No objection.

6 CHIEF JUDGE CHACKIN: 318 is received.

7 (The document referred to,
8 having been previously marked
9 for identification as Bureau
10 Exhibit 318, was received in
11 evidence.)

12 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
13 319 into evidence.

14 CHIEF JUDGE CHACKIN: Any objection?

15 MR. SHAINIS: Just a moment, Your Honor. Just a
16 preliminary, who's the sponsoring witness?

17 MR. KNOWLES-KELLETT: Kay.

18 MR. SCHAUBLE: Kay and Cordaro.

19 MR. KNOWLES-KELLETT: Both Mr. Kay and Mr.
20 Cordaro.

21 MR. SHAINIS: They're both sponsoring it? I
22 object, Your Honor, on relevance and materiality.

23 CHIEF JUDGE CHACKIN: Well, let's find out how
24 it's relevant?

25 MR. SCHAUBLE: Your Honor, the record will show

1 that this is Mr. Kay's handwriting and that Mr. Kay, Mr.
2 Cordaro approached Mr. Kay and asked him what licenses do I
3 have in my name, and as a result of that request, Mr. Kay
4 wrote out this list to Mr. Cordaro saying, look, here's what
5 you have in your name.

6 MR. KNOWLES-KELLETT: It goes to control, Your
7 Honor.

8 MR. SHAINIS: How is that relevant to control? If
9 somebody asks you what car do you drive and you write down
10 you're driving a blank -- Pontiac Grand Am -- does that show
11 that the other person owns the car? I don't think so. It's
12 completely different.

13 MR. SCHAUBLE: Your Honor, if you have to ask
14 somebody else what licenses you're holding in your name --
15 Kay, at one point, Your Honor, represented to the Commission
16 he didn't operate any stations that were not licensed in the
17 name of Kay Buddy Corpro Trucking Group, and subsequent to
18 that, we learned that he operated these stations licensed to
19 Vince Cordaro, and Vince Cordaro knew nothing of these
20 stations, testified that he hadn't even visited them. And,
21 when he wanted to know what stations he owned, he asked Mr.
22 Kay to tell him what stations he owned.

23 CHIEF JUDGE CHACKIN: Well, standing alone,
24 obviously, it doesn't establish control, but I would receive
25 the exhibit as well. Bureau Exhibit 319 is received.

1 (The document referred to,
2 having been previously marked
3 for identification as Bureau
4 Exhibit 319, was received in
5 evidence.)

6 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
7 320 into evidence.

8 MR. SHAINIS: And, I object on relevancy.

9 CHIEF JUDGE CHACKIN: What's the relevancy here?

10 MR. SCHAUBLE: Your Honor, this is a letter
11 purported to be written on behalf of Mr. Cordaro by Dennis
12 Brown, who is also Mr. Kay's counsel. We intend to examine
13 Mr. Cordaro on his knowledge of this letter.

14 CHIEF JUDGE CHACKIN: You dismissed Mr.
15 Cordaro's --

16 MR. SCHAUBLE: Application.

17 CHIEF JUDGE CHACKIN: -- application.

18 MR. SHAINIS: Your Honor --

19 CHIEF JUDGE CHACKIN: Well, wait a minute. I want
20 to know how this is relevant.

21 MR. SCHAUBLE: Basically, it's the circumstances
22 that go to this letter that establish control, that Kay was
23 controlling the actions of Brown & Schwaniger, not Mr.
24 Cordaro. That tests on Coneal.

25 CHIEF JUDGE CHACKIN: Are you going to present Mr.

1 Brown to testify to that, when --

2 MR. SCHAUBLE: No.

3 CHIEF JUDGE CHACKIN: -- he was not representing -
4 -

5 MR. SCHAUBLE: We're going to talk to Mr. Cordaro
6 primarily about what involvement he had in the preparation
7 of this letter.

8 MR. SHAINIS: But, that's --

9 CHIEF JUDGE CHACKIN: Well, are you saying you
10 want his application dismissed or what? I mean, is that
11 contrary to the interest in Mr. Cordaro? What is this?

12 MR. KNOWLES-KELLETT: I don't think Mr. Cordaro
13 had any interest whatsoever, Your Honor, because he just
14 signed applications when asked to do so by Mr. Kay. Mr. Kay
15 in this instance, there was a guy named Jim Doering -- Vince
16 Cordaro had filed one application for a call sign. It had
17 been returned. Mr. Doering filed another application to
18 load on a different channel. Kay whited out, I'm pretty
19 sure we don't want to get into this -- okay, the
20 circumstances, I'm being told, are that basically Mr.
21 Cordaro had very little involvement, if any, in this letter,
22 and your involvement and your correspondence with the
23 Commission, we argue, is relevant to control the station.
24 CHIEF JUDGE CHACKIN: But, this was Mr. Brown's
25 letter.

1 MR. KNOWLES-KELLETT: But, if Mr. Brown is writing
2 it without Mr. Cordaro's knowledge or with little or no
3 input from Mr. Cordaro, it's relevant to control.

4 MR. SHAINIS: But, this letter doesn't establish
5 that.

6 MR. KNOWLES-KELLETT: The letter plus the
7 testimony will establish that.

8 MR. SHAINIS: What you're doing is, you're going
9 to try to get it introduced, Your Honor, and then fish for
10 someone to verify what they're speculating.

11 CHIEF JUDGE CHACKIN: All right, I'll defer ruling
12 on it. You have Mr. Cordaro, I'll defer ruling on Bureau
13 Exhibit 320.

14 MR. SHAINIS: Your Honor, I'd also like to say
15 that I don't think Mr. Cordaro is the proper witness.

16 CHIEF JUDGE CHACKIN: Well, we'll see. We'll see
17 for what purpose it's used, what extent. In other words, if
18 they show this to Mr. Cordaro and say, did you authorize Mr.
19 Brown to dismiss your application and he says no, then, if
20 that's all they're going to use it for. I don't know what
21 else they're going to use it for.

22 MR. SHAINIS: But, even if that was the case, Mr.
23 Brown would be the one who'd be able to say whether he was
24 authorized by Mr. Cordaro.

25 MR. KNOWLES-KELLETT: Cordaro's involvement --

1 CHIEF JUDGE CHACKIN: Mr. Cordaro will certainly
2 testify whether he authorized Mr. Brown to dismiss the
3 application or even file an application.

4 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
5 321 into evidence.

6 CHIEF JUDGE CHACKIN: I assume the Authority would
7 put Mr. Brown on and say, yes, I was authorized by -- 321?
8 Any objection?

9 MR. SHAINIS: No objection.

10 CHIEF JUDGE CHACKIN: All right, Bureau Exhibit
11 321 is received.

12 (The document referred to,
13 having been previously marked
14 for identification as Bureau
15 Exhibit 321, was received in
16 evidence.)

17 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
18 322 into evidence.

19 CHIEF JUDGE CHACKIN: Any objection?

20 MR. SHAINIS: No.

21 CHIEF JUDGE CHACKIN: 322 is received.

22 (The document referred to,
23 having been previously marked
24 for identification as Bureau
25 Exhibit 322, was received in

1 evidence.)

2 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
3 323 into evidence.

4 CHIEF JUDGE CHACKIN: Any objection?

5 MR. SHAINIS: No, Your Honor.

6 CHIEF JUDGE CHACKIN: 323 is received.

7 (The document referred to,
8 having been previously marked
9 for identification as Bureau
10 Exhibit 323, was received in
11 evidence.)

12 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
13 324 into Evidence.

14 CHIEF JUDGE CHACKIN: Any objection?

15 MR. SHAINIS: Just a moment, Your Honor. No
16 objection.

17 CHIEF JUDGE CHACKIN: Bureau Exhibit 324 is
18 received.

19 (The document referred to,
20 having been previously marked
21 for identification as Bureau
22 Exhibit 324, was received in
23 evidence.)

24 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
25 325 into evidence.

1 CHIEF JUDGE CHACKIN: Any objection?

2 MR. SHAINIS: Just a moment. No objection.

3 CHIEF JUDGE CHACKIN: Bureau Exhibit 325 is
4 received.

5 (The document referred to,
6 having been previously marked
7 for identification as Bureau
8 Exhibit 325, was received in
9 evidence.)

10 MR. SCHAUBLE: Your Honor, I move Bureau Exhibit
11 326 into evidence.

12 CHIEF JUDGE CHACKIN: Any objection.

13 MR. KELLER: No objection.

14 CHIEF JUDGE CHACKIN: Bureau Exhibit 326 is
15 received.

16 (The document referred to,
17 having been previously marked
18 for identification as Bureau
19 Exhibit 326, was received in
20 evidence.)

21 MR. SCHAUBLE: Your Honor, I would note that with
22 this exhibit, we're getting into what's considered another
23 area on an issue. Could we take a ten-minute recess at this
24 point?

25 CHIEF JUDGE CHACKIN: All right, take a ten-minute

1 recess.

2 MR. SHAINIS: Your Honor, can we make it 15
3 minutes?

4 CHIEF JUDGE CHACKIN: Fifteen.

5 MR. SHAINIS: Thank you.

6 CHIEF JUDGE CHACKIN: So, what time, 2:35, is that
7 enough time for you?

8 (Whereupon, a short recess was taken.)

9 CHIEF JUDGE CHACKIN: Back on the record. Mr.
10 Schauble?

11 MR. SCHAUBLE: Your Honor, at this time, we're now
12 going to turn to exhibits relative to the issues added by
13 Judge Sippel in his memorandum opinion in Order FCC 98 M-15,
14 and there were two issues in that case. One was to
15 determine the impact of the findings in WT Docket 97-56,
16 that Mr. Kay held control of station's license to Marc
17 Sobel, upon Mr. Kay's qualifications to be a licensee. And,
18 second, an issue determining whether Kay had misrepresented
19 facts or lack of candor concerning his relationship with
20 Marc Sobel.

21 At this time, Your Honor, I offer into evidence WT
22 Exhibit 327, which is the initial decision of Judge Frysiak
23 in WT Docket 97-56, released November 28, 1997. I would
24 note, Your Honor, that this --

25 CHIEF JUDGE CHACKIN: How is that -- go ahead, I'm

1 sorry.

2 MR. SCHAUBLE: -- case is pending, that the case
3 is pending on exceptions to the initial decision filed by
4 Mr. Sobel and Mr. Kay, who intervened as a party in that
5 proceeding.

6 CHIEF JUDGE CHACKIN: Now, how is this relevant,
7 the initial decision?

8 MR. SCHAUBLE: Your Honor, first of all, the way
9 the issues are read and as Judge Sippel held, we do not have
10 to relitigate in this case the issue of whether there was an
11 unauthorized transfer of control of these issues from Mr.
12 Sobel to Mr. Kay, that he'd be bound by the conclusions
13 reached in the Sobel proceeding, also including any
14 modifications of the initial decision that may be made by
15 the Commission in that case.

16 CHIEF JUDGE CHACKIN: So, you would agree with me
17 that it's the Commission's decision, ultimate decision, not
18 the initial decision?

19 MR. SCHAUBLE: Well, obviously, Your Honor, if the
20 Commission chooses to modify the decision in that case,
21 obviously the Commission's decision would be controlling in
22 that case.

23 CHIEF JUDGE CHACKIN: Let's assume for the sake of
24 argument that the Commission doesn't reach the Sobel
25 decision by the time I write my initial decision. Am I

1 supposed to make a determination on the basis of the initial
2 decision, if it was transfer control, or am I supposed to
3 indicate that that determination has to be ultimately on the
4 basis of what the Commission ultimately decides?

5 MR. SCHAUBLE: I think you would have to --

6 CHIEF JUDGE CHACKIN: I mean, I'm not aware of any
7 precedent, unless you could show me a precedent, where a
8 determination was made in another proceeding, based solely
9 on the initial decision, rather than the Commission's
10 ultimate disposition. If you could show me such precedent,
11 I'd be happy to look at it. I'm not aware of such
12 precedent, and as far as I can see, the issues should be
13 based on the Commission's ultimate determination whether or
14 not -- in other words, I agree with you. I have to litigate
15 that issue again, although Kay does have a right, if they
16 wish, to put in some additional evidence, if they wish to.
17 I don't think they're barred, because, as I read it -- well,
18 I don't know. We'll see what Kay has in mind.

19 Are you aware of any precedent, where an issue has
20 been framed in terms of what the initial decision ruled, on
21 this initial decision?

22 MR. SCHAUBLE: Your Honor, I believe the pertinent
23 case on point, and this was addressed before Judge Sippel
24 with the Ocean Pines Broadcast case.

25 CHIEF JUDGE CHACKIN: What happened there?

1 MR. SCHAUBLE: In that case, Your Honor --

2 CHIEF JUDGE CHACKIN: How is that issue framed,
3 Ocean Pines?

4 MR. SCHAUBLE: Your Honor, what the Review Board
5 held in that case was the fact that there was an adverse
6 decision in that case was the basis for adding an issue to
7 the second proceeding --

8 CHIEF JUDGE CHACKIN: We're not talking about
9 adding the issue. I'm asking, how was that issue framed in
10 Ocean Pine, the issue that was added? How was that framed?
11 Was it based on initial decision, or was it based on the
12 ultimate determination?

13 MR. SCHAUBLE: I believe it was based on the
14 initial decision, subject to any modification or review that
15 may be appropriate, should the Commission later modify the -
16 -

17 CHIEF JUDGE CHACKIN: Do you have --

18 MR. SCHAUBLE: I don't have the case here.

19 CHIEF JUDGE CHACKIN: I've never seen an issue
20 framed in that fashion, frankly. I'd like to see that.

21 MR. KELLER: Your Honor, I'll confess I don't have
22 the case in front of me right now, but my recollection is
23 the holding, the essence of the holding of Ocean Pine was
24 that it was entirely properly and indeed, requires, that the
25 Judge and the Review Board in that case take into

1 consideration any cognizance of the initial decision in the
2 other proceedings, that it just could not be ignored.

3 That is an entirely different question from
4 whether the initial decision is binding or whether
5 collateral estoppel should apply. That's a totally
6 different issue. I would not dispute that the initial
7 decision has some relevance and some bearing, but I strongly
8 dispute that it is binding and I even more strongly dispute
9 that collateral estoppel is appropriate, because it's not a
10 final decision. It's one of the key elements of collateral
11 estoppel, not just under FCC jurisprudence, but in general,
12 federal law in general. I mean, finality is a prerequisite
13 for collateral estoppel.

14 So, my recollection of Ocean Pines is, simply
15 said, you have to take it into consideration.

16 MR. SCHAUBLE: Your Honor, the Bureau agrees that
17 what's ultimately going to be controlling in this case is
18 any decision that comes out from the Commission in this
19 case.

20 However, until --

21 CHIEF JUDGE CHACKIN: Well, am I supposed to reach
22 a conclusion, just merely staying what Judge Frysiak's
23 decision is, and on that basis, disqualify the applicant?
24 Is that what you're suggesting?

25 MR. SCHAUBLE: No, I think the issue is a little

1 broader, the way the issue is framed, Your Honor.

2 CHIEF JUDGE CHACKIN: There's two issues, you say?

3 MR. SCHAUBLE: There are two issues.

4 CHIEF JUDGE CHACKIN: Right.

5 MR. SCHAUBLE: The first issue is to determine the
6 impact of the findings of an unauthorized transfer of
7 control on Mr. Kay's qualifications to be a licensee and,
8 you know, I would presume that Mr. Kay would be offering
9 evidence in terms of mitigation for the proposition that,
10 even if there was an unauthorized transfer of control, for
11 reasons A, B, C and D, he should not be deemed unqualified
12 to hold these other licenses.

13 I think that would clearly be proper evidence
14 within the scope, you know, assuming the proper mitigation
15 evidence.

16 CHIEF JUDGE CHACKIN: What if Kay didn't offer any
17 evidence? What am I supposed to determine? Am I supposed
18 to reach a conclusion that he was guilty of unauthorized
19 transfer, based on the fact that Judge Frysiak made that
20 finding?

21 MR. SCHAUBLE: I believe so, Your Honor. I mean,
22 we're in an unusual situation here, because Mr. Kay was a
23 party to the Sobel proceeding. He voluntarily joined in.
24 You know, he had full party status. This is not a case
25 where you just had somebody who testified as a witness in

1 one proceeding and somebody -- Mr. Kay filed findings in
2 this case, fully participated in this case, and he filed
3 exceptions to Judge Frysiak's adverse initial decision.

4 And, I think the forum to determine whether there
5 was an unauthorized transfer of control is not this
6 proceeding, but the Sobel proceeding, where there's been a
7 complete record developed under those issues.

8 And, obviously, Your Honor, I mean, we're hopeful
9 that, I mean, exceptions to the Sobel proceeding were filed,
10 I believe, as early as January, so hopefully we'll be in a
11 position where there will be a Commission decision --

12 CHIEF JUDGE CHACKIN: Well, that would certainly
13 make life easy, if the Commission does decide the issue.
14 And, since Mr. Kay was a party to the proceeding.

15 MR. SHAINIS: Well, what happens if there's an
16 appeal to the Commission decision, assuming the Commission
17 upholds the initial decision?

18 MR. SCHAUBLE: I believe, Your Honor, there's
19 precedent for the proposition that, for our purposes, a
20 Commission decision is sufficiently final for collateral
21 estoppel purposes.

22 CHIEF JUDGE CHACKIN: I think that's correct, if
23 the Commission so rules. But, the point of the matter is,
24 if it's true that Kay was a party and is collaterally
25 estopped, arguing, saying that the facts aren't governed by

1 his testimony in the civil case -- I mean, not civil, what
2 am I saying -- in the Sobel case, then why do we need the
3 initial decision? Why shouldn't we just have the fact that
4 the ultimate conclusion of the Judge? Why do we need the
5 initial decision, since I can't, in any way, change the
6 initial decision, can't consider it, can't revise it?
7 What's the purpose of putting the whole initial decision in?

8 MR. SCHAUBLE: Well, Your Honor --

9 CHIEF JUDGE CHACKIN: Is it sufficient to just
10 stipulate, state the ultimate conclusion?

11 MR. SCHAUBLE: I think that the findings, Kay
12 won't be saying that the findings in the initial decision
13 are relevant to whether or not the transfer of control would
14 be a disqualifying act by Kay. You'd have to look to the
15 decision for what the Judge found were the circumstances
16 under which it occurred. And, he'll be offering mitigation
17 and he'll say, you'd have to weigh this against that.

18 MR. KELLER: But, my understanding is that whether
19 or not it's disqualifying is precisely the issue in this
20 proceeding, and while I dispute, while we disagree that
21 collateral estoppel was applied at all, the collateral
22 estoppel that was applied by Judge Sippel goes only to the
23 question of a transfer of control, that there was a transfer
24 of control. That there was a finding of a transfer of
25 control in Docket 97-56 can be stipulated to.

1 If you're saying that there are facts and
2 circumstances in the record that goes to whether that's
3 disqualifying, that's certainly a matter for litigation in
4 this proceeding, not a matter for transferring from the
5 other proceeding.

6 CHIEF JUDGE CHACKIN: In other words, Judge Sippel
7 put in a factual issue in this case, determined mainly
8 whether Kay misrepresented facts?

9 MR. SCHAUBLE: That's the second issue, Your
10 Honor.

11 CHIEF JUDGE CHACKIN: That's the second issue,
12 right. Now, that, presumably, you're going to put in
13 evidence?

14 MR. KNOWLES-KELLETT: Correct.

15 CHIEF JUDGE CHACKIN: Or rely on Kay's admissions
16 in the Sobel case? I don't know what you're going to rely
17 on. I assume you're going to rely on that.

18 MR. KNOWLES-KELLETT: Correct.

19 CHIEF JUDGE CHACKIN: That's an issue that has to
20 be litigated in this case.

21 MR. SCHAUBLE: We agree with that, collateral
22 estoppel, because the issue that was decided in the Sobel
23 proceeding, and that's regardless of whether Sobel
24 misrepresented facts or lacked candor. That's, at least
25 technically, a distinct issue from whether Kay

1 misrepresented facts or lacked candor.

2 CHIEF JUDGE CHACKIN: All right, so why can't we
3 do what Mr. Keller says, just to stipulate that Judge
4 Frysiak concluded that there was a transfer of control,
5 authorized transfer of control? What do we need all this
6 material in here?

7 I assume what you're going to rely on, insofar as
8 a misrepresentation issue, is the actual transcripts, the
9 testimony of the parties, the testimony you elicit?

10 MR. KELLER: I believe, Your Honor, on
11 misrepresentation, they're relying on additional exhibits
12 that were not even in the other proceeding.

13 (Pause.)

14 MR. SCHAUBLE: Your Honor, the Bureau would take
15 the position that not only is it the ultimate conclusion of
16 the findings of fact with respect -- not only the ultimate
17 conclusion that there was an unauthorized transfer of
18 control, but the findings of fact with respect to the
19 unauthorized transfer of control issue, which is a distinct
20 matter -- I'm not including the misrepresentation issue, the
21 findings with respect to the misrepresentation issue for
22 purposes of this discussion, but we think the estoppel would
23 apply not only to the ultimate conclusion, but we suspect
24 any findings of fact that Judge Frysiak made under the
25 transfer of control issue.

1 CHIEF JUDGE CHACKIN: I don't understand what you
2 want to do here. Well, in any event, I'm not going to
3 receive -- I don't see how this is relevant to the issue
4 that Judge Sippel designated -- the only thing that would be
5 relevant is the fact that Judge Frysiak concluded that there
6 was an unauthorized transfer of control and to that extent,
7 the parties can reach a stipulation or you could prepare,
8 take official notice of the fact that Judge Frysiak so
9 determined.

10 I'm not going to touch that, I can't touch that,
11 and that will be ultimately determined by the Commission,
12 whether Judge Frysiak is correct or not.

13 MR. SCHAUBLE: Okay, I guess, Your Honor, would
14 now be an appropriate point to request official notice of
15 the conclusion of Judge Frysiak that there was, in WT Docket
16 97-56, that there was an unauthorized transfer of control?

17 CHIEF JUDGE CHACKIN: Well, I will take official
18 notice of that. Do you have any objection to my taking
19 official notice of that?

20 MR. KELLER: I don't know that it's exactly a
21 matter of official notice, but I have no objection. I mean,
22 you can just cite to the initial decision for that purpose.

23 CHIEF JUDGE CHACKIN: I'll permit you to cite the
24 initial decision for that purpose, setting forth the date it
25 was issued and it's ultimate conclusion that he determined

1 that there was an unauthorized transfer control. You can
2 take official notice of that.

3 MR. SCHAUBLE: Your Honor, I now move into
4 evidence --

5 CHIEF JUDGE CHACKIN: Well, I am rejecting Exhibit
6 327 as not relevant. Now, 328 is what?

7 (The document referred to,
8 having been previously marked
9 for identification as Bureau
10 Exhibit 327, was rejected from
11 evidence.)

12 MR. SHAINIS: The transcript.

13 CHIEF JUDGE CHACKIN: The transcript.

14 MR. SCHAUBLE: Your Honor, I now move Bureau
15 Exhibit 328 into evidence.

16 CHIEF JUDGE CHACKIN: This goes to what issue, the
17 misrepresentation issue?

18 MR. SCHAUBLE: This goes to the misrep -- we
19 believe there is testimony in here which we believe can, we
20 can use as factual predicate to support the conclusion that
21 Kay knowingly made false statements to the Commission in
22 this case.

23 CHIEF JUDGE CHACKIN: In connection with whether
24 or not the control was vested in Mr. Kay?

25 MR. SCHAUBLE: I'm sorry, Your Honor, I didn't

1 hear?

2 CHIEF JUDGE CHACKIN: In connection with whether
3 or not control --

4 MR. SCHAUBLE: Yes, specifically, there's a
5 statement, there's a representation that Kay has no interest
6 in any station or license to which Mr. Sobel is the
7 licensee.

8 CHIEF JUDGE CHACKIN: All right, an objection?

9 MR. SHAINIS: Yes, Your Honor. This transcript,
10 if I understand it correctly, the only witness is Marc Sobel
11 on this transcript. Mr. Sobel is proposed by the Bureau as
12 a witness, so if he's going to be here for live testimony,
13 and you could certainly use this in your examination of Mr.
14 Sobel, why make it an exhibit? Why burden the record with
15 the relevancy?

16 MR. SCHAUBLE: Your Honor, I think we can clearly
17 establish the relevancy, but in terms of the, you know, the
18 preferred method of proceeding, I mean, I could go ahead and
19 ask Mr. Sobel the exact same question that was asked him in
20 the Sobel proceeding, but it seems to me that would be an
21 inefficient use of time to re-establish matters that have
22 already been established.

23 CHIEF JUDGE CHACKIN: So, why are you calling him
24 as a witness, then? Why don't you just produce the
25 material?

1 MR. SCHAUBLE: There are settlement issue matters,
2 Your Honor. It's not our intention at all to plow over old
3 ground with him again, but there are some additional
4 matters. Relatively brief, but --

5 MR. SHAINIS: Your Honor, this is highly
6 inefficient the way they're proceeding, and they can conduct
7 the case any way they want to, but we're entitled to cross-
8 examine Mr. Sobel. So, if this comes in, then clearly I
9 will use it to cross-examine Mr. Sobel, ad nauseam, if I
10 have to. I mean, it's just burdensome to the record.

11 CHIEF JUDGE CHACKIN: Well, in the first place, I
12 don't see, if you're just dealing with the misrepresentation
13 issue, why are you putting in the entire transcript? Why
14 don't you just offer those portions of this transcript which
15 relate to Mr. Sobel's testimony with regard to the
16 misrepresentation?

17 MR. SCHAUBLE: Your Honor, initially, we can try
18 that. There were two reasons. First, because to a certain
19 extent, it's hard to do any -- exactly which portions --

20 CHIEF JUDGE CHACKIN: Well, if there are some you
21 feel are questionable, you could put that in, but certainly
22 we don't need all this, all these pages, if you're just
23 dealing with the misrepresentation issue. That's pretty
24 discrete. That just deals with the affidavits and Mr.
25 Sobel's testimony concerning the affidavits. We don't need

1 150 pages of testimony when we can just deal with that
2 misrepresentation.

3 MR. KELLER: Whether Mr. Sobel misrepresented
4 furthermore, Your Honor, is not an issue in this
5 proceedings. It's whether Mr. Kay misrepresented, and Mr.
6 Kay does not even testify in Volume II.

7 MR. SCHAUBLE: Mr. Kay's testimony is in the next
8 exhibit.

9 CHIEF JUDGE CHACKIN: I understand that, but
10 that's another question, then. Why are you putting in
11 Sobel's testimony, at all?

12 MR. SCHAUBLE: Because, Your Honor, we believe Mr.
13 Sobel has testified to facts that support the -- to facts
14 which can lead to the conclusion that Mr. Kay
15 misrepresented.

16 CHIEF JUDGE CHACKIN: Well, what we're going to do
17 is, you're going to have to cull this material, set forth
18 which portion of this transcript is relevant to the
19 misrepresentation issue, and then once you've done that,
20 I'll make a ruling if there's any objection on the grounds
21 of relevance.

22 We certainly don't need 150 pages, his entire
23 transcript testimony, which deals a lot more with other
24 subjects, when the only issue is a misrepresentation issue
25 and any involvement you feel that Mr. Kay is involved in it.

1 I mean, Mr. Sobel's involvement, which relates to Mr. Kay.

2 So, that's up to you. I'm not going to receive
3 the entire exhibit.

4 MR. SCHAUBLE: Okay, Your Honor, shall we
5 designate in writing those portions that we --

6 CHIEF JUDGE CHACKIN: Absolutely.

7 MR. SCHAUBLE: Then, if Mr. Kay feels it
8 appropriate, would they also have the right to counter-
9 designate additional portions of his transcript --

10 CHIEF JUDGE CHACKIN: Absolutely.

11 MR. SCHAUBLE: -- that they wish to --

12 CHIEF JUDGE CHACKIN: If they feel there's
13 additional material there which is relevant, they could do
14 that, too. But, you can do it two ways. You can do it by
15 pointing out pages and line numbers which you feel are
16 relevant to the issue, or you could just make a copy and
17 offer as a separate exhibit the portions which you feel are
18 relevant. You can do it either one of those two ways. I
19 don't care how you do it.

20 MR. SCHAUBLE: Very well, Your Honor.

21 MR. SHAINIS: So, is the exhibit rejected?

22 CHIEF JUDGE CHACKIN: The exhibit stands as
23 presently being rejected, yes, with the permission to offer
24 in one of the two fashions which I stated.

25 MR. SCHAUBLE: Your Honor, is there any specific

1 time frame by which you would like us to proceed in one of
2 those two manners?

3 CHIEF JUDGE CHACKIN: Well, I would certainly
4 think that you could have this done by December 7. Is that
5 a Monday?

6 MR. SCHAUBLE: That's next week. We could do
7 that, Your Honor.

8 CHIEF JUDGE CHACKIN: And, you could fax a copy to
9 me and fax a copy to counsel for Kay of the, either
10 identifying the questions that you feel are relevant, or
11 actually submitting the portions which you feel are
12 relevant.

13 MR. SCHAUBLE: We will do that, Your Honor.

14 CHIEF JUDGE CHACKIN: And, if Mr. Kay objects,
15 then I'll rule on the relevancy of those particular
16 portions, but we won't have to deal with 200 pages here.

17 MR. SHAINIS: All right, you want us to object in
18 writing, or if we object at the commencement --

19 CHIEF JUDGE CHACKIN: Object at commencement of
20 the hearing, when an offer is made.

21 MR. SHAINIS: Fine, thank you, Your Honor.

22 CHIEF JUDGE CHACKIN: All right, so I'm rejecting
23 at this time Bureau Exhibit 328.

24 (The document referred to,
25 having been previously marked

1 for identification as Bureau
2 Exhibit 328, was rejected from
3 evidence.)

4 MR. SCHAUBLE: Your Honor, at this time, I offer
5 into evidence Bureau Exhibit 329.

6 CHIEF JUDGE CHACKIN: Is that the testimony of Mr.
7 Kay?

8 MR. SCHAUBLE: It's part of Mr. Sobel and then
9 continuing on to Mr. Kay's testimony.

10 CHIEF JUDGE CHACKIN: As far as pages relating to
11 Mr. Sobel, the same ruling which I just made applies. As
12 far as Mr. Kay, we'll hear whether there's any objection.

13 MR. SHAINIS: Same objection. Mr. Kay is being
14 offered by the Bureau as a witness.

15 CHIEF JUDGE CHACKIN: Well, if they want to offer
16 admissions of Mr. Kay rather than have him testify, they can
17 do so. But, again, they're going to have to delineate which
18 portions they're offering as admissions of Mr. Kay.

19 Of course, they could use it for the purpose of
20 impeachment, too, but they can offer his admissions of Mr.
21 Kay, as long as they delineate which portions you intend to
22 use for that purpose.

23 MR. SCHAUBLE: And, we'll report on that, again,
24 by the seventh, Your Honor.

25 CHIEF JUDGE CHACKIN: All right, so 329 is

1 rejected with permission to conform in accordance with my
2 instructions. The next one is 330.

3 (The document referred to,
4 having been previously marked
5 for identification as Bureau
6 Exhibit 329, was rejected from
7 evidence.)

8 MR. SCHAUBLE: Yes, Your Honor, just more in terms
9 of a housekeeping matter. There were corrections to the
10 transcript which Judge Frysiak, just in the interest of
11 making sure we had a complete and fully accurate record, 330
12 is the orders incorporating the various corrections to the
13 transcript offered by the parties.

14 CHIEF JUDGE CHACKIN: Well, unless the corrections
15 relate to material which you feel is relevant to the
16 misrepresentation issue, I don't see how we need the
17 corrections in the record. So, if you feel there's
18 something there, a correction which corrects material which
19 you feel is relevant, you could offer that portion of it.
20 Otherwise, we don't need the order correcting the hearing
21 transcript. So, that material is rejected.

22 Again, you can introduce that portion which you
23 feel is relevant. Next one is 331.

24 (The document referred to,
25 having been previously marked